FILED
SEP 13 2010
MAGISTRATE JUDGE P. MICHAEL MAHONEY
United States District Court

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

ABLE HOME HEALTH, LLC,

Plaintiff,

v.

OXYGEN QUALIFYING SERVICES, INC., and JOHN DOES 1-10,

Defendants.

09 C 50128

Magistrate Judge Mahoney

FINAL APPROVAL ORDER

1. On May 12, 2010, this Court preliminarily approved the Class Settlement Agreement reached between Able Home Health, LLC ("Plaintiff") and Oxygen Qualifying Services, Inc. ("Defendant" or "Oxygen").

2. The Court approved a form of notice for the class. The Court is informed that actual notice was sent by facsimile by Plaintiff's Counsel's agent, ProFax, Inc. to 20,936 Class Members. There were 14,488 notices successfully sent and 6,448 attempts that failed. Transmissions that were initially unsuccessful were re-dialed a minimum of two times. Plaintiff's Counsel's agent, A&R Printing, Inc., also sent notice by U.S. Mail to 6,440 Class Members with ascertainable addresses; 3,460 of the 6,440 were successfully mailed. Class Counsel also posted the Class Notice on their firm's website, www.edcombs.com. Two Class Members requested exclusion and no objections were filed or received. A list of persons or entities that have validly opted out of the settlement is attached as Exhibit A. A total of 191 Class Members submitted valid claim forms.

3. On September 13, 2010, the Court held a fairness hearing to which Class Members, including any with objections, were invited. The Court, being fully advised in the premises, hereby orders:

a. The Court finds that the Class covered by the Settlement Agreement, and previously certified by the Court is appropriate under FED. R. CIV. P. 23.

b. The Court finds that the provisions for notice to the Class satisfy the requirements of FED. R. CIV. P. 23 and due process.

4. The Court finds that the settlement is fair and reasonable, and hereby approves the **CLASS SETTLEMENT AGREEMENT** submitted by the parties, including the release and the payment by Defendant to create a Settlement Fund of $270,000. The Court further approves of the distribution of the Settlement Fund as follows:

a. Payment of $3,000 to Able Home Health, LLC, as an incentive award for its services as a class representative;

b. An award of attorney's fees and costs in the amount of $81,000. This amount includes the costs of notice and administration.

c. After payments set forth in subparagraphs (a) and (b) of this Paragraph, the balance of the Settlement Fund shall be distributed among those members of the Class (including Plaintiff) who returned a duly executed claim form that is timely or that is otherwise approved by the Court. Each class member shall be paid $500.00. Class members shall be paid by check void 60 days after issuance.

d. Any amount of the Settlement Fund that remains unclaimed or undistributed, will be distributed in a 50/50 proportion to the following *cy pres* recipients: (1) Prairie State Legal Services and (2) Land of Lincoln Legal Assistance Foundation. These distributions will be made not less than 30 days after expiration of the void date on the Class Members' settlement checks.

5. Plaintiff and Class Members Release:

As of the Effective Date, Plaintiff and those Class Members who do not opt out of the Settlement Class (whether or not such members submit a claim form) (the "Releasors"), will forever release, remise and discharge Oxygen and its respective agents, insurers, including but not limited to Erie Insurance Exchange and Erie Insurance Group, employees, officers, directors, partners, shareholders, affiliates, subsidiaries, divisions, parent companies, predecessors in interest, successors in interest, legal counsel, successors and assigns, and all person, natural or corporate, in privity with anyone or more of them (the "Released Parties") of and from any and all claims, counterclaims, complaints, third party complaints, actions, and causes of actions, including but not limited to all claims for injury and damages under the common law, or any local, state, or Federal Statute, including but not limited to the Telephone Consumer Protection Act, 47 U.S.C. § 227, as well as all claims for attorney's fees, costs, expenses and the costs of administering the subject settlement and any and all other claims and/or obligations of any kind and of any nature, that were raised or that could have been raised in the Litigation on behalf of the Plaintiff and Settlement Class pending in the United States District Court for the Northern District of Illinois, Western Division, in the case of *Able Home Health, LLC v. Oxygen Qualifying Services, Inc.*, case number *09 CV 50128* (the "Released Claims").

6. Two Class Members have opted out of the Settlement. (Exhibit A) No Class Members have objected to the Settlement.

7. The Court finds the Agreement fair and made in good faith.

8. The Court directs the Defendant to deliver sums equal to the Settlement Fund to Plaintiff's Counsel within 10 days of the Final Approval Hearing.

9. Defendant to file a Notice of Compliance within 14 days of the Effective Date, attesting that the Settlement Fund has been paid in full to Plaintiff's Counsel.

10. Plaintiff's Counsel or their agent shall distribute the Settlement

Funds in accordance with the provisions of this Final Approval Order within 35 days after entry of this Order.

11. Plaintiff's Counsel or their agent to submit a report on final accounting of the Settlement Fund 30 days after payment of the *cy pres* checks.

12. Plaintiff to submit a memorandum in support of final accounting of the settlement 35 days after payment of the *cy pres* checks.

13. Plaintiff's Counsel or their agent to make the *cy pres* payments 30 days after expiration of the void date on the Class Members' checks.

14. Hearing on Final Accounting of the Settlement and for entry of an order of dismissal on ~~DATE~~, 2011 ~~at TIME a.m.~~
1/14/11 @ 1:30 P.M.

DATE: 9/13/10

ENTERED:

The Honorable P. Michael Mahoney
United States Magistrate Judge

EXHIBIT A

List of Class Members Who Requested to Opt Out of Class Settlement

Able Home Health, LLC v. Oxygen Qualifying Services, Inc., and John Does 1-10
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#	Fax	Name	Address	City	State	Zip
1	5804362286	Hometown Home Health, Inc.	1018 N. Monte Vista	Ada	OK	74820
2	9185829828	Bed-Check Corporation	1550 N. 20th Circle	Lincoln	NE	68503-1101